

(3) *Income tax forms to be used.* In the case of taxpayers engaged in trade or business in the United States Forms 1040B and 1120, as may be appropriate, shall be used. Where the taxpayer is not engaged in trade or business in the United States, Form M797 may be used in lieu of Forms 1040NB, 1040NB—a and 1120NB.

§ 303.1-5 Payment of taxes.

(a) *Pursuant to tentative computations.* The amount of taxes shown by a tentative computation shall be paid by the Attorney General or the taxpayer, as the case may be, to the district director as soon as practicable after the tentative computation has been made. It will not be necessary, however, for the payment by the Attorney General to be made prior to the return of property if an amount sufficient to cover all internal revenue taxes is retained from the property by the Attorney General.

(b) *Pursuant to final computations.* Upon a final computation of internal revenue taxes properly payable, the amount thereof remaining unpaid shall be paid by the Attorney General to the district director as soon as practicable after the final computation has been made, or, in case the property has been returned to the former owner, by such owner. If the final computation shows that the full amount of internal revenue taxes properly payable is less than the amount previously paid, the difference shall be credited or refunded in accordance with the provisions of these and other applicable regulations. A final computation will not prohibit a subsequent recomputation if it is determined that the amount shown by the final computation is erroneous.

(c) *Deficiency procedure.* The Attorney General shall pay internal revenue taxes without regard to the provisions of law relating to the sending of a deficiency notice by certified or registered mail or to notice and demand.

§ 303.1-6 Interest and penalties.

(a) *Liability for interest and civil penalties.* Under subsection (d) of section 36 of the Trading With the Enemy Act there is no liability for interest or penalty on account of any act or failure of the Attorney General. Such subsection is not applicable to interest or pen-

alties payable in respect of any act or failure during the period prior to the vesting of the property by the Attorney General, or after the return of the property, or during the period during which the property was vested by the Attorney General on account of an act or omission of any person other than the Attorney General.

(b) *Adjustment.* In case of any assessment or collection, or credit or refund, of interest or a civil penalty contrary to the provisions of section 36 (c) or (d), proper adjustment shall be made.

§ 303.1-7 Claims for refund or credit.

(a) Claims for refund or credit must be filed within the period prescribed by section 6511 of the Internal Revenue Code of 1954 as modified by section 36(c) of the Trading With the Enemy Act. Any such claim must contain a detailed statement under the penalties of perjury of all the facts relied upon in support of the claim and should be filed with the district director for the district in which the tax was paid. See paragraph (f)(1) of § 303.1-4, relating to final computation.

(b) Any act of the Attorney General for, or on behalf of, a taxpayer in respect of any claim under this part will be considered as the act of such taxpayer, unless such taxpayer notifies the Commissioner of Internal Revenue in writing, by the filing of a claim for refund or credit or otherwise, that he does not ratify such act. See paragraph (b) of § 303.1-4, relating to relationship of Attorney General and former owner.

(c) All refund of taxes paid by the Attorney General shall be made directly to that official.

PART 304 [RESERVED]

PART 305—TEMPORARY PROCEDURAL AND ADMINISTRATIVE TAX REGULATIONS UNDER THE INDIAN TRIBAL GOVERNMENTAL TAX STATUS ACT OF 1982

Sec.

305.7701-1 Definition of Indian tribal government.

305.7871-1 Indian tribal governments treated as States for certain purposes.

§ 305.7701-1

26 CFR Ch. I (4-1-15 Edition)

AUTHORITY: Sec. 7805 (68A Stat. 917, 26 U.S.C. 7805) Internal Revenue Code of 1954.

SOURCE: T.D. 7952, 49 FR 19303, May 7, 1984, unless otherwise noted.

§ 305.7701-1 Definition of Indian tribal government.

(a) *Definition.* A governing body of a tribe, band, pueblo, community, village, or group of native American Indians, or Alaska Natives, qualifies as an Indian tribal government upon determination by the Internal Revenue Service that the governing body exercises governmental functions. Designation of a governing body as an Indian tribal government will be by revenue procedure. If a governing body is not currently designated by the applicable revenue procedure as an Indian tribal government, and such governing body believes that it qualifies for such designation, the governing body may apply for a ruling from Internal Revenue Service. In order to qualify as an Indian tribal government, for purposes of section 7701(a)(40) and this section, such governing body must receive a favorable ruling from the Internal Revenue Service. The request for a ruling shall be made in accordance with all applicable procedural rules set forth in the Statement of Procedural Rules (26 CFR part 601) and any applicable revenue procedures relating to the submission of ruling requests. The request shall be submitted to the Internal Revenue Service, Associate Chief Counsel (Technical), Attention: CC:IND:S, room 6545, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

(b) *Effective date.* The provisions of this section are effective after December 31, 1982.

§ 305.7871-1 Indian tribal governments treated as States for certain purposes.

(a) *In general.* An Indian tribal government, as defined in section 7701(a)(40) and the regulations thereunder, shall be treated as a State, and a subdivision of an Indian tribal government, as determined under section 7871(d) and paragraph (e) of this section, shall be treated as a political subdivision of a State, under the following sections and regulations thereunder—

(1) Section 170 (relating to income tax deductions for charitable, etc., contributions and gifts), sections 2055 and 2106(a)(2) (relating to estate tax deductions for transfers of public, charitable, and religious uses), and section 2522 (relating to gift tax deductions for charitable and similar gifts), for purposes of determining whether and in what amount any contribution or transfer to or for the use of an Indian tribal government (or subdivision thereof) is deductible;

(2) Section 164 (relating to deductions for taxes);

(3) Section 511(a)(2)(B) (relating to the taxation of colleges and universities which are agencies or instrumentalities of governments or their political subdivisions);

(4) Section 37(e)(9)(A) (relating to certain public retirement systems);

(5) Section 41(c)(4) (defining “State” for purposes of credit for contributions to candidates for public offices);

(6) Section 117(b)(2)(A) (relating to scholarships and fellowship grants);

(7) Section 403(b)(1)(A)(ii) (relating to the taxation of contributions of certain employers for employee annuities);

(8) Chapter 41 of the Code (relating to tax on excess expenditures to influence legislation); and

(9) Subchapter A of chapter 42 of the Code (relating to private foundations).

(b) *Special rule for excise tax provisions.* An Indian tribal government shall be treated as a State, and a subdivision of an Indian tribal government shall be treated as a political subdivision of a State, for purposes of any exemption from, credit or refund of, or payment with respect to, an excise tax imposed on a transaction under—

(1) Chapter 31 of the Code (relating to tax on special fuels);

(2) Chapter 32 of the Code (relating to manufacturers excise taxes);

(3) Subchapter B of chapter 33 of the Code (relating to communications excise tax); and

(4) Subchapter D of chapter 36 of the Code (relating to tax on use of certain highway vehicles), if, in addition to satisfying all requirements applicable to a similar transaction involving a State (or political subdivision thereof)

under the Code, the transaction involves the exercise of an essential governmental function of the Indian tribal government, as defined in paragraph (d) of this section.

(c) *Special rule for tax-exempt bonds.* An Indian tribal government shall be treated as a State and a subdivision of an Indian tribal government shall be treated as a political subdivision of a State for purposes of any obligation issued by such government or subdivision under section 103 (relating to interest on certain governmental obligations) if such obligation is part of an issue substantially all of the proceeds of which are to be used in the exercise of an essential governmental function, as defined in paragraph (d) of this section. For purposes of section 7871 and this section, the “substantially all” test is the same as that provided in § 1.103-8(a)(1)(i). An Indian tribal government shall not be treated as a State and a subdivision of an Indian tribal government shall not be treated as a political subdivision of a State, however, for issues of the following private activity bonds—

(1) An industrial development bond (as defined in section 103(b)(2));

(2) An obligation described in section 103(l)(1)(A) (relating to scholarship bonds); or

(3) A mortgage subsidy bond (as defined in section 103A(b)(1), without regard to section 103A(b)(2)).

(d) *Essential governmental function.* For purposes of section 7871 and this section, an essential governmental function of an Indian tribal government (or portion thereof) is a function of a type which is—

(1) Eligible for funding under 25 U.S.C. 13 and the regulations thereunder;

(2) Eligible for grants or contracts under 25 U.S.C. 450 (f), (g), and (h) and the regulations thereunder; or

(3) An essential governmental function under section 115 and the regulations thereunder when conducted by a State or political subdivision thereof.

(e) *Treatment of subdivisions of Indian tribal governments as political subdivisions.* A subdivision of an Indian tribal government shall be treated as a political subdivision of a State for purposes of section 7871 and this section if the

Internal Revenue Service determines that the subdivision has been delegated the right to exercise one or more of the substantial governmental functions of the Indian tribal government. Designation of a subdivision of an Indian tribal government as a political subdivision of a State will be by revenue procedure. If a subdivision of an Indian tribal government is not currently designated by the applicable revenue procedure as a political subdivision of a State, and such subdivision believes that it qualifies for such designation, the subdivision may apply for a ruling from the Internal Revenue Service. In order to qualify as a political subdivision of a State, for purposes of section 7871 and this section, such subdivision must receive a favorable ruling from the Internal Revenue Service. The request for a ruling shall be made in accordance with all applicable procedural rules set forth in the Statement of Procedural Rules (26 CFR part 601) and any applicable revenue procedures relating to submission of ruling requests. The request shall be submitted to the Internal Revenue Service, Associate Chief Counsel (Technical), Attention: CC:IND:S, Room 6545, 1111 Constitution Ave., NW., Washington, D.C. 20224.

(f) *Effective dates*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, the provisions of this section are effective after December 31, 1982.

(2) *Specific effective dates.* Specific provisions of this section are effective as follows:

(i) Provisions relating to chapter 1 of the Internal Revenue Code of 1954 (other than section 103 and section 37(e)(9)(A)) shall apply to taxable years beginning after December 31, 1982, and before January 1, 1985;

(ii) Provisions relating to section 37(e)(9)(A) shall apply to taxable years beginning after December 31, 1982, and before January 1, 1984;

(iii) Provisions relating to section 103 shall apply to obligations issued after December 31, 1982, and before January 1, 1985;

(iv) Provisions relating to chapter 11 of the Code shall apply to estates of decedents dying after December 31, 1982, and before January 1, 1985;

(v) Provisions relating to chapter 12 of the Code shall apply to gifts made after December 31, 1982, and before January 1, 1985; and

(vi) Provisions relating to taxes imposed by subtitle D of the Code shall take effect on January 1, 1983 and shall cease to apply at the close of December 31, 1984.

PARTS 306-399 [RESERVED]

PART 400—TEMPORARY REGULATIONS UNDER THE FEDERAL TAX LIEN ACT OF 1966

Sec.

400.1-1 Refiling of notice of tax lien.

400.2-1 Discharge of property by substitution of proceeds of sale; subordination of lien.

400.4-1 Notice required with respect to a nonjudicial sale.

400.5-1 Redemption by United States.

AUTHORITY: Sec. 7805, Internal Revenue Code of 1954; 68A Stat. 917; 26 U.S.C. 7805.

§ 400.1-1 Refiling of notice of tax lien.

(a) *Scope.* This section provides rules with respect to the provisions contained in section 6323(g), relating to the refiling of a notice of lien arising under section 6321. In general, section 6323(g) contains new rules requiring the Internal Revenue Service to refile a notice of lien during the 1-year period ending 30 days after the expiration of the normal 6-year statutory period for collection of an assessed tax liability, and each succeeding period of 6 years, in order to maintain the effectiveness of a notice of lien. These provisions in section 6323 were added by section 101(a) of the Federal Tax Lien Act of 1966 (80 Stat. 1125), effective after November 2, 1966.

(b) *Requirement to refile.* In order to continue the effect of a notice of lien, the notice must be refiled in the place described in paragraph (c) of this section during the required refiling period (described in paragraph (d) of this section). In the event that two or more notices of lien are filed with respect to a particular tax assessment, the failure to comply with the provisions of paragraphs (c)(1)(i) and (d) of this section in respect of one of the notices of lien does not affect the effectiveness of the

refiling of the other notice or notices of lien. Thus, except for the filing of a notice of lien required by paragraph (c)(1)(ii) of this section relating to a change of residence, the validity of any refiling of a notice of lien is not affected by the refiling or non-refiling of any other notice of lien. The effectiveness of a timely refiled notice of lien relates back to the date on which the notice of lien was effective before the refiling. If the district director fails to refile a notice of lien in the manner described in paragraphs (c) and (d) of this section, the notice of lien is not effective, after the expiration of the required refiling period, as against any person without regard to when the interest of the person in the property subject to the lien was acquired. However, the failure of the district director to refile a notice of lien during the required refiling period will not affect the effectiveness of the notice with respect to (1) property which is the subject matter of a suit, to which the United States is a party, commenced prior to the expiration of the required refiling period, or (2) property which has been levied upon by the United States prior to the expiration of the required refiling period. Failure to refile a notice of lien does not affect the existence of the lien. If a notice of lien is not refiled, and if the lien is still in existence, the Internal Revenue Service may nevertheless file a new notice of lien either on the form prescribed for the filing of a notice of lien or on the form prescribed for refiling a notice of lien. This new filing must meet the requirements of section 6323(f) and is effective from the date on which such filing is made. Upon written request of any person who has a proper interest, any district director may issue a certificate of release of lien if notice of the lien has not been refiled within the required refiling period and the entire liability for the tax has been satisfied or has become unenforceable as a matter of law. Such request should be sent to the district director for the internal revenue district shown on the notice of lien. For provisions relating to certificates of release of lien, see section 6325.